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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 August 1996, at 3 p.m.

Chairman: Mr. EIDE

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The meeting was called to order at 3.15 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

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(agenda item 10) (continued) (E/CN.4/Sub.2/1996/16, 17, 18 and 19 and Corr.1; E/CN.4/Sub.2/1996/NGO/2, 4, 5, 11, 17, 26, 30 and 31)

1. Mr. BENJELLOUN-TOUIMI (Observer for Morocco), in a statement equivalent to a right of reply, referred to remarks by the representative of France-Libertés: Fondation Danielle Mitterrand concerning young Saharan graduates who had come to Rabat to demand their social rights, said that the Moroccan Government was considering their case, which was no different from that of young unemployed Moroccans from other provinces of the Kingdom. In an address on constitutional reform delivered on 20 August 1996, His Majesty Hassan II had said that such problems would be solved in future through decentralization and local democracy in the context of a second chamber of the Moroccan Parliament, which would cooperate with committees set up by local elected authorities, regional chambers of commerce and workers in the regions with a view to finding appropriate employment for every job-seeker. As the rule of law prevailed in Morocco, there could be no question of reprisals against the young Saharans.

2. He assured the representative of the Movement Against Racism and for Friendship among Peoples that his Government was keen to have a referendum on the Western Sahara organized as soon as possible. The Settlement Plan drawn up by the United Nations Mission for the Referendum in Western Sahara (MINURSO) laid down strict rules for the referendum campaign to prevent abuses. Pending the start of that campaign, the young Saharans had understood the importance of seeking economic and social development for all.

3. Mr. DESPOUY, Special Rapporteur on human rights and states of emergency, responding to comments on his report (E/CN.4/Sub.2/1996/19 and Corr.1), said that he understood the concern expressed by some observer delegations at the fact that their country still featured in the list of States that had proclaimed a state of emergency although the situation had been regularized in the meantime. They had been included because his mandate required him to report not only the proclamation but also the termination of emergency regimes.

4. With regard to the future of the list, some speakers had suggested that it was a technical task to be performed by the Secretariat. Others felt that the Sub-Commission should continue to be involved in order to deal with the new substantive issues that arose each year. He was prepared to undertake an overall evaluation to assist the Sub-Commission in taking a decision on the matter.

5. Mr. JOINET, Special Rapporteur on the question of the impunity of perpetrators of violations of human rights, said that he supported Mr. Yimer's suggestion to defer consideration of the "Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/Sub.2/1996/18, annex II) until the next session. He would endeavour to provide members with a revised version of the principles prior to the opening of the session.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 14) (continued) (E/CN.4/Sub.2/1996/21, 22 and 23; E/CN.3/Sub.2/1996/NGO/15; E/CN.4/Sub.2/1995/24; General Assembly resolutions 50/156 and 157)

6. Mrs. WARZAZI deplored the fact that so little time was available for the extremely important subject of discrimination against indigenous peoples. She proposed that at least four meetings should be set aside for the item at the next session.

7. Ms. ROY (International Labour Office) said that the Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) adopted by the International Labour Organization (ILO) were the only two international legal instruments dealing specifically with standards relating to indigenous and tribal peoples.

8. In the context of the peace process in Guatemala, ILO had agreed with the United Nations to supervise the application of 60 ILO conventions in that country, including Convention No. 169 which Guatemala had ratified in June 1996.

9. The ILO Committee of Experts on the Application of Conventions and Recommendations had drawn attention in 1995, in connection with its examination of the situation in Argentina, Bangladesh, Brazil, India and Panama (Convention No. 107) and Colombia and Mexico (Convention No. 169), to the problems faced by indigenous and tribal peoples in enforcing their land and resource rights, including dispossession and displacement from their traditional lands. It had also expressed concern regarding resettlement and rehabilitations policies and programmes and had raised the issue of compensation for the loss of traditional lands.

10. Referring to the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1996/21), she said that ILO welcomed the proposal to conduct a comprehensive study of the problem of recognition of, and respect for, indigenous land rights and looked forward to cooperating with the Sub-Commission in that area.

11. ILO operated a number of technical assistance projects and programmes for indigenous and tribal peoples, including the Interregional Programme to Support Self-reliance of Indigenous and Tribal Communities through Cooperatives and Other Self-help Organizations (INDISCO). She drew attention in particular to a community-based environmental impact assessment project that had been designed in partnership with indigenous peoples in the Philippines.

12. She offered ILO's continued support in the drafting of international standards affecting indigenous and tribal peoples, in particular with a view to ensuring that the draft declaration on the rights of indigenous peoples was compatible with existing international instruments and standards, as called for in General Assembly resolution 50/157.

13. Mrs. MOYA (American Association of Jurists) said that her organization deplored the recent action taken by the French Government against a group of African residents and urged the Sub-Commission to take a stand on the matter.

14. Noting that a people's identity could not be conceptualized, she welcomed the consensus reached by the indigenous peoples represented in the Working Group on Indigenous Populations on the issue of a definition of indigenous peoples and their endorsement of the right to self-identification.

15. Neo-liberal structural adjustment policies were adversely affecting the rights of indigenous populations in many countries. In Brazil, for example, Decree No. 1775 allowed individuals and institutions to contest the historical demarcation of indigenous lands. In Peru, the object of the 1996 implementing regulations in respect of Act No. 26505 of 18 July 1995 was to force indigenous peoples to sell their land cheaply. In Colombia, oil companies were encroaching on indigenous land and the canal provided for under Decree No. 927 of 24 May 1996 would cut through the ancestral lands of indigenous and Black communities of the Pacific region.

16. In the United States of America, false evidence had allegedly been used to convict the Sioux leader Leonard Peltier, who had been sentenced to life imprisonment and required the support of the international community.

17. In Guatemala, the indigenous population was still awaiting implementation of the 1995 Agreement on Identity and Rights of Indigenous Peoples concluded between the Government and the Unidad Revolucionaria Nacional Guatemalteca.

18. Mr. TRAMBOO (International Human Rights Association of American Minorities) noted with satisfaction that the Sub-Commission was actively formulating standards designed to ensure respect for the existing rights of indigenous peoples and to promote the recognition of additional rights. The relations between indigenous peoples and Governments frequently had a legal foundation in treaties, agreement or other arrangements. When fully honoured by both parties, such instruments fostered mutual trust. In some cases, however, treaty rights had been breached and obligations remained unfulfilled.

19. The people of Jammu and Kashmir provided a vivid example of a broken pledge [...]

20. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, submitted that the statement by the representative of the International Human Rights Association of American Minorities bore no relationship to agenda item 14.

21. The CHAIRMAN, having failed to obtain a satisfactory answer from the representative of the NGO in question regarding the relevance of his statement to agenda item 14, ruled him out of order.

22. Mrs. HABIB (International Islamic Federation of Student Organizations), welcoming the inclusion of a separate agenda item on indigenous peoples, drew attention to the specific problems facing indigenous peoples in disputed territories. Kashmir was one such territory [...]

23. The CHAIRMAN, having ascertained that the statement by the representative of the International Islamic Federation of Student Organizations did not relate to agenda item 14, ruled her out of order.

24. Mr. WADLOW (World Federalist Movement), noting that the Working Group on Indigenous Populations had so far focused almost exclusively on relations between the State and various sub-groups, drew attention to the role of indigenous peoples in processes of regional, multi-State integration designed to establish peace on a regional basis or to create vast economic zones. Indigenous individuals had little say either in the high-technology industries that played a leading role in the integration process or in government decision-making. To ensure that all voices were heard in that process, including those currently marginalized, it was essential to build a strong civil society and to ensure that basic human rights were respected and personal security guaranteed.

25. Mr. HERNANDEZ ACEVEDO (Latin American Federation of Associations of Relatives of Disappeared Persons) said that, despite the celebration of the International Decade of the World's Indigenous People, the situation of indigenous people in Latin America had actually worsened, mainly as a result of the heavy debt burden borne by Governments and the continent-wide application of the neo-liberal economic model, which had led to the bankruptcy of thousands of small and medium-sized businesses. The situation of the 12 to 15 million indigenous Mexicans was only one example of that process. Social violence and the lack of elementary services such as safe drinking water, electrification, education and health were causing many persons, most of them children and elderly, to die of starvation and disease. At the same time a policy of extermination and marginalization was being pursued against the destitute, peasants and indigenous persons, who were being dispossessed of their lands and natural resources. At present the most repressive action was concentrated in the States of Chiapas, Guerrero, Oaxaca, Tabasco, Puebla and Michoacán, where the emergence of the Zapatista National Liberation Army and the Revolutionary People's Army was being used as an excuse. A large part of the country had been militarized, and communities were living under a virtual state of siege in which many of their basic human rights were violated. Hundreds of indigenous persons had been forced to emigrate.

26. Many NGOs had already testified to the situation currently facing the Mexican people. His organization therefore urged all representatives at the United Nations and all NGOs to take action to help to stop the wave of violence which the Government was carrying out against indigenous persons, peasants and the Mexican people in general.

27. Mrs. JOURDON (Movement against Racism and for Friendship among Peoples - MRAP) noted the great difficulty being experienced in arriving at a universal definition of "indigenous populations" and the concern regarding the possible emergence of secessionist movements leading to independence. However, it was difficult to disagree with Mrs. Daes's view that a population

could flourish and feel itself to be part of the State in which it was administratively situated only if it was free to choose its own representatives and if the latter could participate on a footing of equality in decision-making on matters of general policy and, in particular, on matters affecting their own communities. In other words, only participation and negotiation could ensure freedom and peace in a setting of mutual respect. MRAP welcomed the choice of health as a topic for discussion in the Working Group.

28. To illustrate those general points she drew attention to the case of Myanmar, which, under the Government of the State Law and Order Restoration Council (SLORC) had been transformed from the biggest producer and exporter of rice in South-East Asia into that region's biggest producer and exporter of opium and refined heroine. The opium production has been blamed on the country's indigenous peoples, but if that were so it was difficult to understand how the best-known individual involved was allowed to live undisturbed in a comfortable house in the capital. SLORC had signed cease-fire agreements with 15 of the 16 rebel movements and now controlled the whole country. It might therefore be expected that opium production would fall to almost zero next spring and that the military junta would embark on a real dialogue with the freely chosen representatives of the valley populations. However, nothing of the kind was taking place. Ruling the country with an iron fist, SLORC was subjecting the indigenous populations to serious vexations that had been documented by various human rights organizations and by the Special Rapporteur on the situation of human rights in Myanmar [...]

29. The CHAIRMAN ruled the speaker out of order, since the subject-matter of her statement did not relate to agenda item 14 and the documents before the Sub-Commission.

30. Mr. Poma (Commission of the Churches on International Affairs of the World Council of Churches) said that the World Council of Churches (WCC), having participated in the preparatory meeting and in the work of the Working Group on Indigenous Populations, wished to raise several issues of concern regarding the Working Group's report (E/CN.4/Sub.2/1996/21). First, it was disappointed that the Working Group had been unable to recommend that its name should be changed to "Working Group on Indigenous Peoples". Second, WCC shared the Working Group's concern regarding the participation of indigenous peoples in the observance of the United Nations "International Day of the World's Indigenous Peoples". However, it questioned the process of consultation that was being recommended, believing that it would be more appropriate to consult with the indigenous representatives at the Working Group's fifteenth session in 1997. WCC therefore suggested that the issue should be made a sub-item under the agenda item dealing with the International Decade of the World's Indigenous People to be considered at the fifteenth session. Third, WCC endorsed the recommendation calling for the appointment of a special rapporteur to conduct a comprehensive study on the problem of indigenous land rights. It hoped that the study would be conducted in meaningful consultation with indigenous peoples, who should set the parameters of the study and provide the basic documentation and references. Fourth, WCC welcomed the Working Group's view that the Human Genome Diversity Programme should be halted until all affected indigenous peoples were fully

informed and their free consent was given for its continuation. Access to full information and transparency of intent should be prerequisites when consulting with indigenous peoples.

31. WCC had been especially interested in developments within the Working Group at its most recent session because of the current activities it was undertaking with its own indigenous programme, under which it sought to engage in meaningful partnerships with indigenous peoples. That had meant that WCC had had to enter into a process of decolonization, which indigenous peoples could not achieve by themselves. They were trying to do so but States still sought to maintain the status quo. The decolonization process began with State acceptance that the alternatives offered by indigenous peoples were legitimate and would have to go hand-in-hand with the affirmation of the rights of indigenous peoples currently being discussed in the open-ended inter-sessional working group on the draft United Nations declaration on the rights of indigenous peoples.

32. Mr. LITTLECHILD (International Organization of Indigenous Resources Development - IOIRD), also speaking on behalf of the Four Cree Nations of Hobbema, expressed concern about the decision to continue consideration of the concept and definition of "indigenous peoples" and referred the Sub-Commission to the joint resolution adopted at the Indigenous Peoples' Preparatory Meeting held prior to the fourteenth session of the Working Group on Indigenous Populations. As the Chairperson-Rapporteur of the Working Group, Mrs. Daes, had said at the 28th meeting, one definition was neither possible nor useful.

33. IOIRD welcomed the Chilean Government's offer to host a second workshop on a possible permanent forum and recommended that a preparatory meeting of indigenous peoples should be held to agree, if possible, on specific issues relating to its mandate, membership and financial implications, among other matters. IOIRD also wished to thank the Working Group for including the sub-item on health in its agenda.

34. IOIRD's call for the holding of two World Indigenous Nations Games during the International Decade of the World's Indigenous People included both cultural events and traditional games and had received the support of the Chairman of Special Olympics International. IOIRD agreed with the philosophy of using sport for positive development, peace and international solidarity but it did not condone the theft of cultural spirit, music or knowledge during the Atlanta Olympics as reported by Mrs. Daes - a matter which the Sub-Commission might wish to investigate. IOIRD also supported the Working Group's recommendation for the holding of international and regional meetings on health and restated its recommendation that a global indigenous health conference should be held on Treaty 6 Territory.

35. In addition, IOIRD supported the recommendation that a study should be undertaken on the problem of recognition of and respect for indigenous land rights as a natural follow-up to the final report on the study on treaties, agreements and other constructive arrangements between States and indigenous populations. In some instances treaties had been agreements to share land or to grant surface rights to land but had instead been used to extinguish indigenous title, resulting in dispossession and thus in an indirect threat to life. A special rapporteur should be appointed at an early date, possibly in

the person of an indigenous expert or one of the current members of the Working Group on Indigenous Populations having a good knowledge of the information presented by indigenous peoples in the past. IOIRD welcomed the recommendation that a sub-item on "land and environment" should be included in the Working Group's agenda for its fifteenth session. Transferring the International Day of the World's Indigenous People to 1 August might cause confusion in places where the date of 9 August had already been circulated. IOIRD requested the Sub-Commission to ensure that indigenous views were taken into account in the ongoing review of existing United Nations mechanisms, procedures and programmes and urged the Sub-Commission to leave paragraph 176 of the Working Group's report as it stood. In fact, all United Nations documents should now use the words "indigenous peoples" and not "indigenous populations" or "indigenous people" as in the past.

36. Thanks were due to Mr. Alfonso Martínez for completing, under difficult circumstances, his third progress report on the study on the significance of treaties, agreements and other constructive arrangements (E/CN.4/Sub.2/1996/23). IOIRD appreciated his candid analysis of the North American situation and the reference to the fundamental principles of consent and the need to implement treaties in their original spirit, with due respect for the way in which they had been understood by indigenous peoples. Finally, since Treaty 6 representatives had participated in several international forums on the subject, IOIRD urged that the field mission to examine in situ the contemporary significance of a historic treaty in one country should be carried out in Treaty 6 Territory.

37. Mr. LARS-ANDERS BAER (The Saami Council) said that the decision of the Working Group on Indigenous Populations to continue its consideration of the concept of "indigenous peoples" seemed to be necessary owing to the fact that certain Governments still advocated the view that indigenous peoples should be defined or opposed the use of the term "peoples" owing to the specific reference to self-determination in the United Nations draft declaration on the rights of indigenous peoples. The Saami Council could not see any reason why Governments should fear that term. On the contrary, continued denial of fundamental rights for indigenous peoples could undermine the stability of a nation State, since indigenous peoples possessed the right to self-determination regardless of what the final Declaration might state. Some Governments also advocated the need for a definition of the term "indigenous", stating that the absence of such a definition in the draft declaration would lead to confusion and would limit the acceptability of the document. However, the beneficiaries of the draft declaration could be easily identified even without such a definition, since the criterion used in Mr. Martínez Cobo's report (E/CN.4/Sub.2/1986/7 and Add.1-4) was adequate to determine whether a person or community was indigenous or not. The Saami Council welcomed the Working Group's recommendation that a special rapporteur should be appointed to conduct a study of the problems pertaining to indigenous land rights and welcomed the Working Group's decision to include the question of "indigenous peoples: environment and land" as a sub-item in the agenda for its next session, since indigenous peoples depended on the land for their survival.

38. The only way in which the United Nations could enhance its ability to fulfil its obligations towards indigenous peoples was to establish a permanent forum with the necessary mandate and resources. It could be entitled the

"United Nations Commission on the Status of Indigenous Peoples" and should be established as a subsidiary body of the Economic and Social Council. It should not be a replacement for the existing Working Group on Indigenous Populations and should have a broad mandate covering monitoring, policy development, coordination, and programming.

39. It would be a mistake to transfer the International Day of the World's Indigenous Peoples from 9 August to 1 August, since the date of 9 August was already widely accepted throughout the world. The Working Group's proposal to consult with indigenous peoples on that matter through written communications would not of itself yield satisfactory results and should be supplemented by open discussions at its fifteenth session.

40. Finally, the Saami Council strongly supported the proposal to change the name of the Working Group on Indigenous Populations to "Working Group on Indigenous Peoples" and expressed its deep disappointment concerning the deletion of paragraph 176 in the revised report.

41. Mr. SANJOY (Liberation) drew attention to the situation of the indigenous peoples of the Chittagong Hill Tracts as an example of discrimination against indigenous peoples. Although Bangladesh had continuously identified itself as a democratic country since its creation in 1971, the presence of the military in the Chittagong Hill Tracts region was an indication to the contrary. An informal estimate calculated that one-third of the Bangladesh military and paramilitary forces were stationed in that region, which constituted about one-tenth of the total area of the country and had an indigenous population of about 600,000. Continuing reports of rape, torture, arbitrary arrest and unlawful killings filtered through, and recently Kalpana Chakma, organizing secretary of the Hill Women's Federation, had been abducted from her home. Any unlawful entry into or use of reserved or protected forests was a criminal offence, although indigenous peoples were dependent upon them for their livelihood.

42. The practice of demarcating forests for use and management solely by the Government continued. Deforestation was also a cause for serious environmental concern. Plans to create a reserve forest in the Hill Tracts announced by the Government on 21 May 1992 would entail the displacement of thousands of indigenous people from their ancestral homes and lands. His organization called for the immediate cancellation of those plans, in order to provide the affected indigenous peoples with the security of land rights on which their survival depended.

43. Between 1959 and 1961, as a result of a massive hydroelectric project in the Hill Tracts, 54,000 acres of agricultural land had been submerged and 100,000 people displaced without compensation. The situation had been further exacerbated by a Government-sponsored population transfer programme between 1979 and 1985, under which some 450,000 settlers from the plains districts had been allocated land, most of which belonged to the indigenous peoples. The crucial issue of land rights was at the root of the conflict that had been raging in the Hill Tracts for the past 20 years. The process of dialogue initiated in 1992 had yet to yield any tangible results. His organization thus strongly endorsed the decision of the Working Group on Indigenous Populations to recommend to the Sub-Commission that a study should

be undertaken and a special rapporteur appointed to conduct a comprehensive study of the problem of recognition of and respect for indigenous land rights.

44. Mr. CHAVEZ (Observer for Peru) said that Peru's multi-ethnic and multicultural composition was recognized in its Constitution, which guaranteed every citizen the right to use his own language in transactions with the authorities. The indigenous languages, as well as Spanish, were thus official languages, and indigenous communities had legal personality. The State respected their cultural identity, and communal work, land distribution and economic and administrative matters were organized on autonomous lines. Land ownership was inalienable, within the framework of the law. Indigenous authorities exercised jurisdictional functions within their territories. All those constitutional measures showed the importance attributed by the Peruvian State and society to indigenous matters.

45. In international forums, Peru took as its starting-point the principle that recognition of the multi-ethnic and multicultural character of national societies must in no circumstances jeopardize the unity of the nation State. In dealing with indigenous matters at international level, priority must be given to constructive dialogue and a pragmatic and politically responsible approach. Extreme or impractical positions would only damage indigenous peoples' interests.

46. Under the able guidance of its Chairman-Rapporteur, the Working Group on Indigenous Populations had initiated a fruitful dialogue between States and representatives of indigenous peoples. One of the most controversial concepts discussed in the Working Group had been the definition of the concept of indigenous populations. Nevertheless, his delegation was convinced that the working group responsible for elaborating a draft declaration on the rights of indigenous peoples would be able to guarantee those peoples high levels of self-government and independence without jeopardizing the legitimate right of the nation State to territorial integrity, security and sovereignty. Pending the establishment of a permanent forum for indigenous people, the Sub-Commission's own working group would continue to serve as a valuable forum for discussion of new issues such as health. Consideration should also be given to the possibility of convening regional or subregional meetings for consultations among indigenous peoples.

47. Mr. LILLO (Observer for Chile) said that the Working Group on Indigenous Populations had made substantial progress at its fourteenth session in combating discrimination against indigenous peoples, despite differing opinions on some controversial issues such as the question of a definition. Its debate on the issue of health had been particularly positive. His delegation hoped that that constructive spirit would continue to prevail over the spirit of confrontation that had caused so much harm to indigenous peoples' interests in the past. Cooperation and confidence-building must be promoted if differences of opinion on indigenous issues were to be overcome. That spirit should also inform the forthcoming second session of the working group responsible for elaborating a draft declaration on the rights of indigenous peoples on the basis of the Sub-Commission's draft United Nations declaration. It was to be hoped that the session would be well attended by representatives of indigenous organizations.

48. His delegation attached particular importance to the early establishment of a permanent forum for indigenous people. The workshop on that question organized in Copenhagen from 26 to 28 June 1995 had made a particularly valuable contribution to that process. Consequently, at the previous session of the Commission, Chile had offered to host a second workshop on the question, an offer it had reiterated at the recent session of the Working Group. The importance of continuing that exercise should be reaffirmed in the context of the review of the existing mechanisms, procedures and programmes called for in General Assembly resolution 50/157. It was important that the progress made should not be hampered by sterile debates on issues such as the definition of the concept of "indigenous". Furthermore, given the differing views of States as to the importance of the exercise, it should be pursued in parallel with, rather than as a precondition to, other activities.

49. Mr. SEMASHKO (Observer for Ukraine) said that Ukraine attached great importance to strengthening the rights of indigenous peoples under international law. Article 11 of the Constitution adopted on 28 July 1996 provided for the development of the specific ethnic, cultural, linguistic and religious characteristics of all Ukraine's indigenous peoples; and under its article 22 the rights of indigenous peoples were guaranteed by the State. The legislature was also obliged to develop the scope of those constitutional rights, and the abrogation or limitation of those rights were prohibited.

50. The completion of work on the draft United Nations declaration on the rights of indigenous peoples was a major achievement of the Working Group on Indigenous Populations, and of the Sub-Commission as a whole. It must not slacken its efforts in that regard, now that the draft declaration was being considered by the working group of the Commission. Despite the complexity of the task, it was important - both for Governments and for the indigenous peoples themselves, given the important legal consequences - to define what constituted an indigenous people and in what way it differed from a national minority. The Sub-Commission could also make an important contribution to defining the content and scope of indigenous peoples' rights. His delegation also welcomed the Working Group's stated intention to consider the question of indigenous peoples and the environment, and its recommendations on the question of a permanent forum for indigenous people.

51. Ukraine attached particular importance to the problem of resettling national minorities deported from its territory during the totalitarian era. The scale of the problem was enormous: more than 260,000 Crimean Tartars and deportees of other nationalities had already returned to Crimea. Following the collapse of the Soviet Union, all the financial and material costs of their return had been borne by Ukraine, for unfortunately, attempts to deal with the problem through voluntary cooperation with other members of the Commonwealth of Independent States concerned had failed. In spite of its precarious economy, in the five years since independence Ukraine had mobilized all available resources to facilitate the return of the deportees and solve their cultural and educational problems, through a special programme of priority measures and with assistance from the United Nations Development Programme. Similar programmes were being elaborated by the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. The Government of Ukraine was cooperating successfully with representatives of the various nationalities in those

endeavours, and was convinced that through cooperation between State structures and representatives of indigenous peoples, and with the support of the international community, the rights of indigenous people could be realized and their urgent problems solved.

52. Mr. QUAYES (Observer for Bangladesh) said that paragraph 34 of the report of the Working Group on Indigenous Populations on its fourteenth session (E/CN.4/Sub.2/1996/21) contained a reference to a global figure for the world's indigenous people. It appeared that the source of that figure was Operational Directive 4.20 of the World Bank's operational manual of September 1991, the text of which was contained in document E/CN.4/Sub.2/AC.4/1995/3 of 21 June 1995. It could be seen from that text that the World Bank's use of the term "indigenous people" encompassed other groups, as was acknowledged in the Directive itself. As used by the World Bank, the term could cover just about anyone in the vulnerable or disadvantaged sectors of society. If such random application was the basis for a global figure ostensibly endorsed by an Assistant Secretary-General, the Sub-Commission would do well to distance itself from it and to advise him accordingly.

53. His delegation had also suggested that domestic criteria adopted by States in which special provisions had been made for indigenous people might be used to resolve the question of criteria. Furthermore, it had made a statement during the fourteenth session of the Working Group under the agenda item "Other matters", the content of which it had hoped to see reflected in the report. It therefore requested that the text of the report should be amended so as to incorporate the substance of that statement.

54. He also noted that the documentation on agenda item 14 contained references to "observer Governments" and "government delegations". It was his understanding that observer delegations participating in the Sub-Commission and its working groups did so as representatives of nations, not merely of Governments. It would therefore be appropriate if those delegations were referred to as "observer delegations of States". His own delegation, for instance, should be referred to as "the observer delegation of Bangladesh", not as "the observer Government of Bangladesh".

55. Mrs. PALALA (Observer for the Philippines) said that several articles of the 1987 Philippine Constitution explicitly provided for and guaranteed the rights of indigenous people to their ancestral lands in order to ensure their economic, social and cultural well-being. Those constitutional provisions had been fleshed out with legal and policy safeguards, foremost among them an Administrative Order of the Philippine Department of Environment and Natural Resources, which, inter alia, aimed at tapping ecologically sound traditional practices so as to ensure sustainable development of natural resources in indigenous areas.

56. The commitment to protect indigenous communities' rights to their ancestral domains extended to all developmental and environmental programmes implemented by the Philippine Government. Major projects had to undergo an Environmental Impact Assessment process to ensure that they were socially acceptable to the communities concerned. Environmental conservation programmes, particularly those related to bio-diversity conservation, also

provided for the recognition of ancestral lands and the customary rights of indigenous cultural communities over them. Executive Order No. 247 provided for the sharing of benefits from bio-prospecting activities with indigenous communities. In recent months, the Government had begun issuing Certificates of Ancestral Domain Claims (CADCs) in recognition of indigenous communities' rights to those domains. In observance of the International Day of Indigenous People, President Ramos had also signed pledges of his Government's commitment to the promotion and protection of the welfare and human rights of Philippine indigenous people.

57. The CHAIRMAN said that, before giving members the floor to address agenda item 14, he wished to thank NGOs and observer delegations for their statements, which in most cases had related closely to the agenda item under discussion. A few NGOs, however, apparently wished to use every agenda item as a pretext for putting over one and the same basic message. Under each agenda item, valuable preparatory material such as reports of working groups, working papers and studies was provided as a basis for the Sub-Commission's discussions. As a minimum, statements by NGOs on agenda items other than item 6 should relate to that preparatory material. NGOs and observer delegations of States were of course welcome to provide information on situations in their own or other countries. However, general political statements with little bearing on the issues under discussion were not welcome; nor were they conducive to the work of the Sub-Commission. At the present session he had felt compelled to cut a speaker off in only a very few instances. Such liberality might not be possible at future sessions. He therefore appealed to speakers to concentrate on those issues conducive to further understanding and development of the item under consideration.

58. Mr. BENGOA said there were various reasons why the health of indigenous peoples was an issue of such fundamental importance. Firstly, indigenous communities had a very high incidence of certain diseases, a very high infant mortality rate, and poor health facilities. In Latin America, discrimination and poverty ensured that morbidity and mortality were higher in indigenous communities than in the rest of the population. Secondly, there was an enormous and growing interest in traditional medicines and healing methods used by indigenous communities. Thirdly, it was vital to protect the intellectual property of indigenous peoples and ensure that scientific research was carried out with their full participation. Finally, the populations studied as part of the vast project to decipher the human genetic code known as HUGO (human genome organization) were, more often than not, indigenous populations, and blood samples were taken from them without the correct procedures being followed. Apart from the bioethical issues raised by that practice, there was growing concern at the failure to respect, at the very least, the principle of informed consent.

59. Turning to the report of the working group set up by the Commission on Human Rights under the chairmanship of Mr. Urrutia of Peru to elaborate a draft declaration on the rights of indigenous peoples (E/CN.4/1996/84), he said that it included the first substantive discussion on the draft declaration adopted unanimously by the Sub-Commission two years earlier (resolution 1994/45), and offered the first real feedback from Governments on 10 years of work by experts who did not themselves have the power to turn the draft declaration into a binding international instrument. The report had the

virtue of presenting widely differing views on the subject with admirable clarity, not to say, at times, bluntness. The suggestion that the Sub-Commission's draft was "a sound basis for the discussions to come" (para. 21) might come as a surprise to those who had laboured so long over it, but could be seen as a positive reaction that presaged a long debate. There were marked differences in the reactions of the Governments represented in the working group; some found that the draft declaration contained "social or political aspirations and not rights", while others thought that it contained "minimum standards". It was some comfort to remember that almost all rights had started off as the aspirations of people. Further differences had emerged between the indigenous representatives and the Governments; the former would have liked the draft to be adopted as it stood.

60. There had been much confusion over the question of defining - or not - the peoples or, according to some, populations to whom the declaration would apply. The social and demographic sciences supplied ready definitions of indigenous peoples, and a glance at a dictionary should convince anyone that "peoples" was the best word to describe them. He suggested that a workshop should be set up in which Governments, experts and indigenous representatives could sit down quietly and think afresh about a definition that took account of the real situation of indigenous people and their historical groups.

61. He urged Latin American countries to study closely the latest version of the Inter-American Declaration on the Rights of Indigenous Peoples being prepared by the Inter-American Commission on Human Rights, and the accompanying information from countries, indigenous peoples and specialized bodies, so that they would be able to play a more active part in future discussions.

62. Finally, he called on the Commission and the Working Group to concentrate on producing a clear timetable and seeking out common ground, and to hold special workshops so that agreement could be reached on a declaration at the earliest opportunity.

63. Ms. MBONU said it was important to emphasize that the issues facing indigenous populations were quite different from those facing minorities. While minorities were protected under article 27 of the International Covenant on Civil and Political Rights, there was no such provision for indigenous populations. She agreed with the observer for Nigeria, quoted in paragraph 34 of the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1996/21), that a clear-cut definition was necessary to identify the essential distinction between indigenous peoples and minorities. States had nothing to fear from such a definition; as the indigenous representatives mentioned in paragraph 41 had pointed out, there were many provisions and conditions in international law that prevented the abuse of the right to self-determination. She did not understand why paragraph 176 had been deleted from the original report (E/CN.4/Sub.2/1996/21/Corr.1); she did not feel it had posed any threat to States with indigenous populations. She supported the recommendation in paragraph 178 for a study to be undertaken on the problem of recognition of and respect for indigenous land rights, which were of great importance to indigenous peoples. She was in favour of creating a permanent forum, and welcomed the offer by the Government of Chile to host the second workshop on the issue.

64. Mr. EL-HAJJÉ said that the main concerns of the indigenous representatives at the meeting of the Working Group on Indigenous Populations had not been the definition of indigenous peoples but health, food, education, work, their cultural heritage and rights. Nevertheless, a definition was needed, not only to distinguish independent peoples from minorities, but also to encourage States to recognize indigenous groups on their territories. Although a definition ran the risk of polarizing opinions, it could also encourage reconciliation and the construction of a society which fully accepted and integrated a population with certain distinguishing features. There were drawbacks to allowing a definition to be drawn up separately by indigenous peoples or States, and as the international community appeared reluctant to take on the task, it fell to the Working Group to begin work on a definition, which would incorporate elements such as language, religion, a particular geographical distribution and a common history and cultural heritage.

65. Mrs. DAES (Chairperson-Rapporteur of the Working Group on Indigenous Populations) said she agreed fully with Mrs. Warzazi that more time should be allocated to agenda item 14. In reply to the comments by Mrs. Mbonu and others, she explained that it had been decided to cut out paragraph 176 out of respect for the views of certain Governments and because opinions in the Working Group had been divided on the timing of the change. In her opinion, Governments had nothing to fear from a change of wording, as indigenous peoples were generally peaceful and law-abiding, and the matter would be raised again at the fifteenth session of the Working Group.

66. She said that the question of changing the date on which the International Day of the World's Indigenous People was celebrated would also be raised at the fifteenth session. The ceremony at the United Nations Office at Geneva to mark the day had a hollow ring when most of the indigenous representatives attending the annual session of the Working Group had been obliged for financial reasons to leave the city a few days earlier.

67. In response to comments by the observer for Bangladesh, she said that although she personally had no objection to his proposals, it was quite correct to refer to either "the observer delegation of the Government" of, say, Greece or "the observer delegation of the State" of Greece.

68. On the question of the number of indigenous peoples, she had passed on the information available to her at the time, and would try to be more precise in the future as information from more sources was made available to her.

69. Mr. ALFONSO MARTÍNEZ said he was in favour of changing the title of the Working Group to the "Working Group on Indigenous Peoples", so as to avoid problems of terminology interfering with the work of the Group.

70. With regard to Mr. El-Hajjé's statement that there were drawbacks to accepting definitions of "indigenous people" from one source or another, he was of the view that the merit and validity of a definition did not depend on where it originated but on its quality. He therefore hoped that the acceptance of any definition produced by the Working Group would not be confined to the Working Group itself.

The meeting rose at 6.05 p.m.